

# SHANGHAI TURBO: STALLED ENGINE

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## Case overview

On 15 April 2017, the results of the Annual General Meeting (AGM) of Shanghai Turbo Enterprises Ltd, an S-chip company, led to the cessation of executive director and Chief Executive Officer (CEO) Liu Ming after 56.86% of shares voted against the resolution to re-elect him. This led to a series of episodes related to his retaliation against the new management. This raises pertinent legal and corporate governance issues surrounding S-chip companies as well as investor protection issues. The objective of this case is to facilitate a discussion of issues such as removal of directors; the implications of changes in ownership structure; directors' responsibilities; rights of shareholders; and the corporate governance implications of different legal systems.

## About the company

Shanghai Turbo Enterprises Ltd (Shanghai Turbo) was incorporated in the Cayman Islands on 14 July 2005 and listed on SGX on 16 January 2006.<sup>1</sup> As of 2017, Shanghai Turbo wholly owned a Hong Kong incorporated entity, Best Success (Hong Kong) Limited (Best Success). Best Success wholly owned a subsidiary called Changzhou 3D Technological Complete Set Equipment Co. Limited (CZ3D) which specialises in precision engineering, manufacturing of vane products and related subcontracting services. CZ3D is the only income generating entity of the Group. Both Best Success and CZ3D act as investment holding companies.<sup>2</sup>

Liu Ming, a Chinese citizen resident in Changzhou, Jiangsu Province, China, owned almost 30% of the shares in Shanghai Turbo as at 30 April 2019. After the passing of his father, Liu took over the business by inheriting his father's shares, becoming the largest substantial shareholder of Shanghai Turbo.<sup>3</sup>

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This is the abridged version of a case prepared by Chua Yong Jun, Denise Goh Li Wen, Leow Li Feng, Neo Zhen Cheng and Ong Minyi under the supervision of Professor Mak Yuen Teen. The case was developed from published sources solely for class discussion and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees. This abridged version was edited by Emma Lee Mei Jie under the supervision of Professor Mak Yuen Teen.

## Removal of Liu Ming

Shanghai Turbo faced a steady decrease in profits from 2014 to 2016, and in 2017, the Group generated a net loss after tax of RMB156,070,000.<sup>4</sup> It was alleged that Liu had been transferring CZ3D's profitable business and customers to his own private company<sup>5</sup> and using CZ3D's resources for the benefit of this private company.<sup>6</sup>

At the AGM held on 15 April 2017, Liu's position as a director of the company came to an unexpected and abrupt end, as 56.86% of shares voted against his re-election.<sup>7,8</sup> The cessation of Liu as executive director and CEO of Shanghai Turbo called for a handover of management responsibilities.<sup>9</sup>

After Liu's removal from the board, Shanghai Turbo's board comprised of three directors, namely Daniel Liu, Raymond Lim and Jack Chia.<sup>10</sup> Daniel Liu was a non-executive, non-independent director while the other two were non-executive independent directors. Jack Chia was the lead independent director, before being appointed as non-executive independent Chairman on 1 August 2017.<sup>11</sup>

## Delayed handover or illegal takeover?

With the unexpected cessation and abrupt handover of responsibilities to new management, production activity at the Group's factory in Chang Zhou faced temporary disruption.<sup>12</sup>

On 8 May 2017, Zhang Rong was appointed by the board as the CEO of CZ3D. Zhang Rong was previously a general manager of J&R Consulting (Beijing) Co., Ltd and Centrosolar Glass Trading Co., Ltd. The Shanghai Turbo board viewed him as an experienced and capable person, and believed that his appointment would be beneficial to CZ3D and the Group.<sup>13</sup>

Although Shanghai Turbo's normal business operations were initially expected to resume within a week, the operational halt was further extended and the expected resumption date of operations was postponed by a month.<sup>14,15</sup> The company further revealed that this would disrupt the revenue stream of the Group for that period.<sup>16</sup>

On 2 July 2017, the new management team of CZ3D convened a general meeting of all the employees of CZ3D. 205 of the 219 employees who attended signed an open letter to the local government authorities, requesting for assistance to end the illegal occupation of the factory premises by some of the former management personnel. Plans were also made to resume control of the factory premises peacefully by mid-July 2017.<sup>17</sup>

As of 20 July 2017, the former management personnel and their associates continued to occupy the CZ3D's factory premises illegally, and the factory's production was still halted due to the loss of operational control of CZ3D. A second general meeting was held by the new management team and two board members on 21 July 2017 in an attempt to regain control of CZ3D. An announcement was then released, stating that employees would receive compensation regardless of their decision to stay or leave the company. Most of the employees chose to stay in the company, but some demanded higher compensation.<sup>18</sup>

## **Chaos and violence**

In addition to the production halt, CZ3D's new management team faced difficulties when it tried to enter CZ3D's premises – the team was blocked by security guards employed by the old management team.<sup>19</sup> The new management team had to explain to the workers the implications of illegally occupying the company premises, and threatened that it would have to resort to government assistance to evict the security guards.<sup>20</sup>

When Raymond Lim, Zhang Rong and their associates attempted enter the factory premises, they were physically assaulted with plastic batons by associates of Liu.<sup>21</sup> This assault led to physical injuries from “bruises on face and limbs, bleeding on the head to bone fractures of the limb(s)”.<sup>22</sup> The incident was brought up to the local police and Singapore Consulate-General in Shanghai.<sup>23</sup> Following the assault, local authorities quickly intervened to remove the trespassers from the factory premises through the use of riot police, and some individuals were also arrested.<sup>24</sup>

## **Shanghai Turbo's operational losses**

During this “five-month impasse” in the operational handover of CZ3D, the Group faced a steep financial decline. The 2017 full-year results revealed a drop in Group revenue from RMB136,977,000 in 2016 to RMB35,299,000, and net loss of RMB156,070,000 – a drastic drop from 2016's gross profit of RMB2,293,000.<sup>25, 26</sup>

Consequently, an Emphasis of Matter audit opinion was issued by the independent auditor for Shanghai Turbo's 2017 financial statements, which raised material uncertainties that cast doubt on the company's ability to continue as a going concern. These uncertainties mainly included the recoverability of receivables from two major customers of the Group, inventory write-down, and impairment of non-current assets.<sup>27</sup>

## **Legal episodes**

On 27 June 2017, Shanghai Turbo issued a Writ of Summons against Liu to facilitate the handover of operations to the new management of CZ3D, on the grounds of Liu's failure to adhere to certain obligations in his service agreement with Shanghai Turbo.<sup>28</sup> The proceedings

were mainly based on the following alleged breaches of the service agreement: Liu's failure to deliver up the CZ3D factory to the new management, diversion of business to another company, and disclosure of confidential information.<sup>29</sup>

As a pre-emptive defence, Shanghai Turbo secured a S\$30 million injunction from the Singapore High Court against Liu on 15 September 2017. This effectively froze the disposal of his assets through a Mareva Injunction. He was also restrained from requisitioning any Extraordinary General Meeting (EGM) to remove current directors or appoint new board members (Voting Injunction) and prevented from exercising his voting rights.<sup>30</sup>

Subsequently, an anonymous requisition letter was received by Shanghai Turbo on 20 October 2017, requisitioning for an EGM to replace the entire board with three former directors – Huang Wooi Teik, Kelvin Tan and Liu – as well as Pan Haiya, who was Liu's assistant.<sup>31</sup>

In November 2017, the requisition letter was deemed to be invalid.<sup>32</sup> On 4 January 2018, another requisition letter regarding the removal of the current board was sent, this time by two shareholders of Shanghai Turbo - Lin Chuanjun and Zhang Ping, collectively known as the "Requisitioning Shareholders".<sup>33</sup>

On 18 January 2018, Shanghai Turbo obtained another injunction against Liu, restraining him from exercising his voting rights. At the same time, Shanghai Turbo also sought to add Lim Chuanjun and Zhang Ping to these proceedings, to restrain them from holding an EGM to remove the new board.<sup>34</sup>

In response to the injunctions secured by Shanghai Turbo, the Requisitioning Shareholders appealed to the Singapore High Court on 9 March 2018 to vary the injunction. This resulted in the restraining of the company from issuing any shares, rights, or securities.<sup>35</sup>

On 20 March 2018, Liu challenged the jurisdiction of the Singapore courts on the injunctions placed on both himself and the Requisitioning Shareholders. Eventually, the Singapore High Court decided that this case laid in the hands of the Chinese Courts, and set the injunctions aside.<sup>36</sup>

Shanghai Turbo then filed an appeal on 18 May 2018 against the discharge of injunctions against Liu only. This allowed the injunctions against the Requisitioning Shareholders to be discharged, hence requiring the company to convene the EGM. The company persisted in its appeal for the stay on the orders discharging the injunctions against Liu.<sup>37</sup>

## **Plea to shareholders**

Shareholders were notified of the convening of the EGM through a circular, and Shanghai Turbo urged them against voting for the removal of the current board due to various reasons. Firstly, there would be loss of continuity of oversight as Shanghai Turbo would lose a board of seasoned directors with significant commercial experience. According to the Appendix attached to the circular, none of the three proposed directors have directorship or senior management experience in a Singapore company, and do not have relevant formal training to equip them for such a role either. Secondly, the company will not be in compliance with Rule 221 of the Listing Manual of the SGX-ST if the proposed directors were to be elected as only one of the three proposed directors is a resident in Singapore. Rule 221 requires foreign issuers to have at least two independent directors who are Singapore residents. Additionally, the Requisitioning Shareholders and proposed directors were not interviewed by the current board and therefore little is known about their respective backgrounds and qualifications.<sup>38</sup>

## **View of the Securities Investors Association (Singapore)**

“There appears to be no legitimate reason for two new shareholders to remove the current board,”

– *SIAS President, David Gerald*<sup>39</sup>

Securities Investors Association Singapore (SIAS) wrote an article, urging minority shareholders to stand firm and vote responsibly in the upcoming Shanghai Turbo EGM to keep the current board. This was based on two reasons, the first being the jurisdiction over the legal issues. It was noted that Liu’s case was handed over to Chinese Courts. As a company listed in Singapore and having raised capital from Singaporeans, it was questionable for the jurisdiction of this lawsuit to be handed over to the Chinese Courts. Secondly, there was high possibility that Lin Chuanjun, Zhang Ping and Liu may be acting in concert, which would result in them exceeding the 30% threshold in shareholding. This would require them to make a general offer to shareholders. This was supported by Allport Ltd, a 27% stake shareholder of Shanghai Turbo since its Initial Public Offering in 2006 as “they too find it troubling that two new shareholders, whom they believe have recently acquired the new shares are joining forces to call for the removal of the current directors and the fact that this is the second attempt in doing so”.<sup>40</sup>

## **The Court’s decision**

After the discharge of the injunction against the Requisitioning Shareholders, Shanghai Turbo was still left with legal disputes against Liu. The company initiated proceedings on the terms of the service agreement, which was written with a “floating” choice of law and jurisdiction sub-clauses. This resulted in the resolution by the Court that there was no basis to exercise jurisdiction over Liu, thereby setting aside the Mareva and Voting Injunctions.<sup>41</sup>

However, on 27 September 2018, the Court of Appeal ruled in favour of Shanghai Turbo with regards to the setting aside of the Mareva and Voting Injunctions in respect of Liu.

## Uncertain future

The disruption in operations following the removal of Liu and actions of the Requisitioning Shareholders were highly detrimental to Shanghai Turbo and its shareholders. This was just the latest case of foreign-incorporated companies, particularly S-chip companies, having legal or corporate governance problems and often ultimately, delisting from SGX.<sup>42</sup> Could this be a call to action for SGX to tighten listing rules or implement additional preventive measures to enhance investor protection?

## Future of Shanghai Turbo's board

Despite the Court of Appeal ruling in favour of Shanghai Turbo, three non-executive independent directors resigned from Shanghai Turbo on 1 October 2018. This was followed by the appointment of four new non-executive independent directors – Wee Liang Hiam, Leng Yew Chee Philip, Ong Sing Huat and Seet Chong Tong. The introduction of the new directors to Shanghai Turbo's board was intended "to produce a fresh perspective in light of the ongoing issue with Zhang Ping and Liu Ming".<sup>43</sup>

Not long after, announcements regarding the removal of these four new directors were made on 30 April 2019.<sup>44,45,46,47</sup> The four directors all failed to be re-elected by the same margin of votes, with a combined 52.6% of shareholders voting against them during the AGM on 30 April 2019.<sup>48</sup> Despite being rejected as proposed directors at the EGM in February 2019, Koh Wee Kiang and Loh Kai Keong were appointed as independent directors during the AGM, with the former becoming the new Remuneration Committee Chairman, and the latter heading the Audit Committee.<sup>49,50</sup> The other two independent directors appointed at the AGM were Lee Kiang Piaw, and Kuang Wooi Teik.<sup>51,52</sup>

## The turbulence continues

On 12 April 2019, the independent auditor of Shanghai Turbo issued a disclaimer of opinion with respect to the company's consolidated financial statements for FY2018. Reasons for the disclaimer include the inability to verify the appropriateness of the company's going concern assumptions used for the preparation of the financial statements, together with issues of insufficient appropriate audit evidence.<sup>53</sup> At the 30 April 2019 AGM, shareholders refused to accept Shanghai Turbo's latest audited financial statements.<sup>54</sup>

Shareholders representing 55.66% also blocked the resolution to allot and issue new shares in the company.<sup>55</sup> With these turbulent meetings, lawsuits and board changes, what would it take for Shanghai Turbo to get back on track again?

## Discussion questions

1. Despite the removal of Liu Ming from the board, he continued to have significant influence in the management of CZ3D. Discuss why this is so and the challenges this poses to board oversight and corporate governance generally.
2. Shareholders of foreign incorporated companies often have trouble taking action against directors and officers of such companies. Based on Shanghai Turbo's situation, how could minority shareholders be better protected?
3. Comment on the role and effectiveness of the Securities Investors Association (Singapore) in protecting minority shareholder interests in Singapore. What more can be done to protect the interests of minority shareholders?
4. What are the roles and duties of independent directors? In the case of Shanghai Turbo, do you think they adequately discharged their duties? In your opinion, should the three independent directors have resigned? Explain.
5. With reference to Rule 14.1(a) Singapore Code of Takeovers and Mergers, should the Requisitioning Shareholders be considered to be acting in concert with Liu Ming? The issue of concert parties often arises in a number of situations, such as change of control and interested/related party transactions. For example, there have been many instances of new shareholders acquiring just below the 30 percent threshold for a mandatory general offer (MGO) and taking control, without triggering a MGO. How can the concept of concert parties be better enforced?

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